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File #: 206526

June 12, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Jeffrey Tobias v. PPL Electric Utilities Corporation
Docket No. C-2024-3049220

Dear Secretary Chiavetta:

Attached for filing are the Preliminary Objections of PPL Electric Utilities Corporation to the Complaint of Jeffrey Tobias in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully,



Nicholas A. Stobbe

NAS/dmc
Attachments

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA EMAIL AND FIRST-CLASS MAIL

Jeffrey Tobias
1094 Highland Drive
Mechanicsburg, PA 17055
tobiaspepsi@comcast.net

Date: June 12, 2024



Nicholas A. Stobbe

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeffrey Tobias,

Complainant,

v.

PPL Electric Utilities Corporation,

Respondent

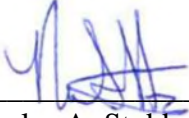
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Docket No. C-2024-3049220

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY FILE AN ANSWER TO THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTIONS MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

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Date: June 12, 2024

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeffrey Tobias,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2024-3049220
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent	:	

**PRELIMINARY OBJECTIONS OF
PPL ELECTRIC UTILITIES CORPORATION TO THE
COMPLAINT OF JEFFREY TOBIAS**

AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric”) and hereby files these Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Complaint filed by Jeffrey Tobias (“Complainant”) be dismissed in its entirety as against PPL Electric. In support thereof, PPL Electric states as follows:

I. BACKGROUND

1. PPL Electric furnishes electric distribution, transmission, and default supply services to approximately 1.4 million customers throughout its certificated service territory, which includes all or portions of twenty-nine counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania. PPL Electric is a “public utility,” an “electric distribution company,” and a “default service provider” as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 102, 2803.

2. By Secretarial Letter dated May 23, 2024, PPL Electric was served with the above-captioned Complaint. In the Complaint, the Complainant that his “neighbors [sic] pine tree in the [Complainant’s] air space completely taken over my service pole...” (Complaint ¶ 4.)

3. The Complainant further requests as relief that he “need[s] [the Complainant’s] neighbor to hire a tree trimmer to take pressure off [the] Complainant’s electric line so it doesn’t snap and tree limbs out of my airspace.” (Complaint ¶ 5.)

4. PPL Electric herein files these Preliminary Objections to the Complaint. For the reasons explained below, PPL Electric respectfully requests that the Complaint be dismissed in its entirety and with prejudice as against PPL Electric for lack of Commission jurisdiction over the dispute, pursuant to 5.101(a)(1) of the Commission’s regulations. 52 Pa. Code § 5.101(a)(1). Alternatively, PPL Electric respectfully requests that the Complaint be dismissed in its entirety and with prejudice as against PPL Electric for legal insufficiency pursuant to Section 5.101(a)(4) of the Commission’s regulations. 52 Pa. Code § 5.101(a)(4).

II. STANDARD OF REVIEW

5. Pursuant to the Commission’s regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

(7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a) (emphasis added).

6. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwlth.*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (citing *Dep't of Gen. Serv. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)); accord *Complaint of Nat'l Fuel Gas Distrib. Corp. and Petition for an Order to Show Cause*, Docket No. P-00072343 (December 26, 2007). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007). For preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery, and any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

7. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. See *Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987). Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. See *Stilp*, at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998).

III. PRELIMINARY OBJECTIONS

A. PRELIMINARY OBJECTION NO. 1 – THE COMMISSION IS WITHOUT JURISDICTION TO GRANT THE RELIEF THE COMPLAINANT IS REQUESTING

8. In the Complaint, the Complainant requests that the Commission Order the Complainant's neighbor to "hire a tree trimmer to take pressure off [his] electric line" and, in turn, remove the Complainant's neighbor's "tree limbs out of [his] airspace." (Complaint ¶ 5.)

9. On the face of the Complaint, it is evident that the Complainant is not requesting that the Commission require PPL Electric to perform his requested relief.

10. Rather, the Complainant's dispute appears to be entirely with his neighbor.

11. The Commission must act within, and cannot exceed, its jurisdiction. *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (Pa. 1977); *Loma, Inc. v. Pennsylvania Public Utility Commission*, 682 A.2d 424 (Pa. Cmwlth. 1996).

12. Pursuant to Section 501 of the Public Utility Code ("Code"), 66 Pa. C.S. § 501, the Commission's duty is "to enforce, execute and carry out, by its regulations, orders or otherwise" all the provisions of the Public Utility Code. Relatedly, Section 701 of the Code, 66 Pa. C.S. § 701, allows any person, having an interest in the subject matter, to file a formal complaint in writing with the Commission setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer. *See also* 52 Pa. Code § 5.21(a).

13. Here, PPL Electric is a public utility subject to the Commission's jurisdiction. However, the Complaint makes no allegation setting forth any act or thing done or omitted to be done by PPL Electric in violation, or claimed violation, of any law in which the Commission has jurisdiction to administer.

14. Indeed, there is "no claim involving utility service, only a dispute between two neighbors which may eventually impact utility service to [the] Complainant. There is no claim that [utility] has violated any regulation, order or statute. There is simply a landowner who realizes that the present day actions of his neighbor may have legal and monetary consequences at a later date." *Ball v. Verizon Pa. Inc.*, Docket No. C-2010-2200618, 2010 Pa. PUC LEXIS 1883 *9 (Initial Decision issued Dec. 21, 2010) *adopted without further Commission action* (Order entered Mar. 3, 2011).

15. Accordingly, PPL Electric respectfully submits that the Complaint should be dismissed for lack of jurisdiction.

B. THE COMPLAINT IS LEGALLY INSUFFICIENT AND SHOULD BE DISMISSED WITH PREJUDICE AS AGAINST PPL ELECTRIC BECAUSE THE COMPLAINT FAILS TO ALLEGE ANY VIOLATIONS BY PPL ELECTRIC

16. PPL Electric incorporates by reference Paragraphs 1 through 15 as if fully set forth herein.

17. The Complaint is legally insufficient and should be dismissed with prejudice as against PPL Electric because the Complaint fails to allege any violations by PPL Electric.

18. As a matter of law, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa PUC 196, 1990 Pa. PUC LEXIS 19, at *8 (Order entered Feb. 8, 1990) (citing *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976)).

19. When “the Complaint fails to state a claim against the named respondent upon which the Commission may grant relief,” the Complaint is “insufficient as to substance,” and the “Respondent is entitled to judgment as a matter of law.” *Stabley v. Phila. Gas Works*, Docket No. F-2010-2186368, 2010 Pa. PUC LEXIS 231, at *6 (July 29, 2010) (Initial Decision), *adopted without modification*, (Order entered Oct. 1, 2010); *see Coggins v. UGI Cent. Penn Gas Inc.*, Docket No. C-2012-2312796, 2012 Pa. PUC LEXIS 1497 (Sept. 10, 2012) (Initial Decision), *adopted without modification*, (Order entered Nov. 9, 2012).

20. In the Complaint, the Complainant makes clear that his requested relief is for the Commission to direct his “neighbor to hire a tree trimmer...” (Complaint ¶ 5.)

21. The Complaint is not clear on its face what alleged act or act to be omitted is on the part of PPL Electric that gave rise to the Complaint.

22. In fact, the Complaint does not contain any factual averment that PPL Electric is responsible for vegetation management around the Service Line that is allegedly encroached upon by the Complainant's neighbor's tree. (Complaint ¶¶ 4-5.)

23. Indeed, the Complaint does not make mention of PPL Electric beyond naming the Company as the Respondent. (Complaint ¶ 3.)

24. The Complaint does not allege that PPL Electric violated the Public Utility Code, the Commission's regulations, a Commission order, or the Company's Commission-approved tariff.

25. Therefore, the Complainant has failed to state a claim against PPL Electric upon which the Commission may grant relief and, therefore, is legally insufficient. *See Rok*, 527 A.2d at 214; *Stilp*, 910 A.2d at 781.

26. Accordingly, the Complaint should be dismissed in its entirety and with prejudice as against PPL Electric.

IV. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Complaint be dismissed in its entirety and with prejudice as against PPL Electric Utilities Corporation pursuant to 52 Pa. Code § 5.101(a)(1) and (4).

Respectfully submitted,



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Date: June 12, 2024

Attorneys for PPL Electric Utilities Corporation

VERIFICATION

I, PATRICK EISENHAUER, being the Supervisor Vegetation Management EU at PPL Electric Utilities Corporation, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect PPL Electric Utilities Corporation to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 06/11/2024

Patrick Eisenhauer
Patrick Eisenhauer (Jun 11, 2024 13:12 EDT)

Patrick Eisenhauer